

Laborers' International Union of North America, Construction and General Laborers' Local Union No. 836, AFL-CIO (Corbet Construction, Inc.)¹ and Ralph E. Carpenter

Laborers' International Union of North America, Construction and General Laborers' Local Union No. 836, AFL-CIO (Upon This Rock Construction, Inc.) and Ralph E. Carpenter

Laborers' International Union of North America, Construction and General Laborers' Local Union No. 836, AFL-CIO (Various Employers) and Ralph E. Carpenter

Laborers' International Union of North America, Construction and General Laborers' Local Union No. 836, AFL-CIO (E.E. Austin and Son, Inc.) and Ralph E. Carpenter. Cases 6-CB-8050, 6-CB-8099, 6-CB-8177, 6-CB-8320, and 6-CB-8455

May 29, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On December 19, 1991, Administrative Law Judge Thomas A. Ricci issued the attached decision. Counsel for the General Counsel filed limited exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,² and conclusions as modified, and to adopt the recommended Order as modified,³ and set forth in full below.

¹The caption has been amended to reflect the correct names and roles of the respective parties.

²In accordance with the General Counsel's exceptions, we correct the judge's references to the Respondent's refusal to refer member Ralph E. Carpenter to Upon This Rock Construction and its attempt to cause Kirilla Construction to discharge him, as violations of Sec. 8(a)(1) rather than Sec. 8(b)(1)(A) of the Act. We also find merit in the General Counsel's exceptions to the judge's failure to find that the Respondent violated Sec. 8(b)(2) as well as Sec. 8(b)(1)(A) by this conduct and by its refusal to refer Carpenter to Corbet Construction, a refusal that the judge found violated Sec. 8(b)(1)(A). See *Plumbers Local 669 (Best Fire Protection)*, 268 NLRB 1218, 1221-1222 (1984), *enfd.* in relevant part 778 F.2d 8 (D.C. Cir. 1985). We have modified the judge's findings and conclusions of law accordingly.

³We find merit in the General Counsel's exceptions to the judge's failure to remedy the violations found by including an expunction remedy and adding to the make-whole remedy a provision for reimbursement to the Charging Party for his lost wages, travel costs, and other expenses incurred in appealing the union fines. See *Laborers Northern California Council Local 294 (Baker Co.)*, 275 NLRB 278, 280 (1985). Because of these modifications, we have set out the Order in full.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and orders that the Respondent, Laborers' International Union of North America, Construction and General Laborers' Local Union No. 836, AFL-CIO, Bradford, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Filing or processing internal union charges against members, or refusing to refer them for employment, or causing or attempting to cause their discharge, because they engaged in protected dissident union activity.

(b) In any like or related manner restraining or coercing employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify the Kirilla Construction Company, in writing, that it has no objection to the hiring of Ralph E. Carpenter.

(b) Make Ralph E. Carpenter whole for any loss of earnings he may have suffered because of the Respondent's having refused to refer him for employment with Corbet Construction, Inc. and Upon This Rock Construction, Inc., in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed as in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(c) Reimburse Ralph E. Carpenter for any lost wages, travel costs, and other expenses incurred by him in appealing his fines, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), with interest as prescribed in *New Horizons for the Retarded*, *supra*.

(d) Remove from its files any references to the charges against Carpenter and notify him in writing that this has been done and that it will not use the charges against him in any way.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all records necessary to analyze the amount of its liability under this Order.

(f) Post at its meeting halls, offices, hiring halls, or any places where it customarily posts notices to its members in Bradford, Pennsylvania, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted for 60 consecu-

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

tive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 6 in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT file or process internal union charges against any members, or refuse to refer them for employment, or cause or attempt to cause their discharge, because they engaged in protected dissident union activity.

WE WILL NOT in any like or related manner restrain or coerce our members in the exercise of their Section 7 rights.

WE WILL remove from our files any references to the charges against Ralph E. Carpenter and notify him in writing that this has been done and that we will not use the charges against him in any way.

WE WILL notify the Kirilla Construction Company, in writing, that we have no objection to its hiring Ralph E. Carpenter for any employment.

WE WILL make Ralph E. Carpenter whole for any loss of earnings he may have suffered because of our refusal to refer him to Corbet Construction, Inc. or Upon This Rock Construction, Inc., plus interest, and for any loss of wages or travel costs and other expenses he may have incurred in appealing his fines.

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, CONSTRUCTION AND
GENERAL LABORERS' LOCAL UNION
No. 836, AFL-CIO

Sandra Beck Levin, Esq., for the General Counsel.
Stephen M. Schmerin, Esq., of Pittsburgh, Pennsylvania, for
the Respondent.

Ralph E. Carpenter, of Kane, Pennsylvania, for the Charging
Party.

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge. In this extended proceeding, two hearings were held, one on April 24 and 25, 1991, and another on October 8, 1991, both in Brad-

ford, Pennsylvania. The hearings were based on five separate complaints, all resulting from charges filed by an individual, Ralph Carpenter. The charges were filed on November 20, 1989, January 23, May 18, November 29, 1990, and June 18, 1991. The question presented in all these complaints is whether Local 836, the Respondent here, acting through its authorized agents caused Carpenter, the Charging Party, to be denied employment here and there in violation of Section 8(b)(1)(A) of the Act. A brief was filed by the General Counsel after the first hearing closed.

On the entire record, and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYERS INVOLVED

The various complaints name three companies as the Employers involved in this case. They are: Corbet Construction Company, Under This Rock Construction Company, and Kirila Contractors. The complaints detail the extent of these companies' business in commerce sufficient to place them under the jurisdiction of the Board in these proceedings. The various answers admit the correctness of these commerce allegations. Accordingly, I find that Corbet Construction Company, Under This Rock Construction Company, and Kirila Contractors are employers within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

I find that Laborers' International Union of North America, Construction and General Laborers' Local Union No. 836, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

All this litigation grew out of a strong animosity that developed in 1989 between Carpenter, an ordinary member of Laborers Local 836, and Donald Cummins, its business agent. Cummins is in the charge of the Union's referral system. He is authorized to send members out to work from his list of unemployed members when an employing company calls for men either by name or just generally, Cummins is a salaried employee and agent of the Local.

In June 1989, because the Local was short of funds, its executive board decided to assess all members \$75 to support the Union. When Carpenter received a notice to pay that amount, he objected. As a result of his opposition, the Union held a vote at a membership meeting, where the decision to assess the money was affirmed by a majority. Carpenter paid his amount but continued to the union officers as dishonest people. He spoke very derogatively about Cummins' participation in union affairs. The result was continued animosity between the two men.

Finally, on September 18, 1990, Lawrence Dunbar, the Union's president, filed an internal union charge against Carpenter accusing him of seeking work by himself and working for a nonunion contractor. A second charge was filed against Carpenter on October 10, 1990, by Albert Glover, a union steward. This one saying that Carpenter had "defamed" the Union.

A trial board, consisting essentially of all the officers of the Local, considered the two charges on November 18,

1990. As to the first charge, the one filed by employee Glover the board found Carpenter guilty and ordered him to pay a \$1500 fine. Both Dunbar and Donald Cummins sat on that trial board and signed the order fining Carpenter. As to the second charge, filed by the Union's president, Carpenter was again found guilty and for this offense was fined \$5000. Neither Dunbar nor Cummins sat on the trial board for that charge and fine. But Cummins' father, Nicholas Cummins, did sit on the board for that decision.

Carpenter appealed both of these decisions against him by the Local to the Union's International in Washington, D.C. The decision there was to overrule both lower decisions and to set aside the entire findings by the trial boards. Referring to the \$5000 fine imposed on Carpenter for working 2 or 3 days at a particular location, the International's appeals panel called it "grossly disproportionate," quite apart from the fact it was not justified at all on the lack of merit in the charge.

That Carpenter had a statutory right to object to the way the officers, or even a majority of the union members, chose to operate the Union, is so clear as to require no citation of authority here. The very fact that the Union's International itself so held is enough to prove that by its processing of those charges the Local was attempting to coerce Carpenter in his statutory right. It was truly one technique, among others, used by the local officers to silence Carpenter's outspoken criticism of how the local officers operated. Cummins was always in a special position to carry out the Local's resolve against that one member by virtue of his position as the referral agent of the Union. It was he who had power every now and then to give work to members or to see that a man did not go to work when an employer wanted him.

I find that by processing those two charges against Carpenter the Respondent, Local 836, violated Section 8(b)(1)(A) of the Act.

As to the other complaint allegations of coercion against Carpenter, a question of credibility exists. The General Counsel offered testimony showing that Cummins, in charge of referrals, refused to send Carpenter when some company asked for him, that he took action to have Carpenter removed from one job or another, etc. Cummins contradicted all this; he denied having said anything to anyone that might have prejudiced Carpenter's employment. Do I believe Cummins, or do I believe Carpenter? Both were emotionally involved in this entire proceeding. Cummins unquestionably still very much resented having been publicly called a crook by the other men. And Carpenter was still affected by the conduct of the Local when its officers turned against him so "disproportionately." However, the fundamental credibility question is perfectly resolved by the testimony of several witnesses who were outside the internal conflict within the Union, and who had nothing to gain by lying in this case. Accordingly, when their testimony supports the complaints, and when it questions the complaint allegations, I credit them.

The first complaint deals with a company named Corbet Houses, a construction company. On November 6, 1989, Dan Corbet, of that company, telephoned Business Agent Cummins and said he needed two laborers and made clear he wanted Ralph Carpenter to be one of them. Cummins came back with "what's wrong with Yasurek?," as both Carpenter and Cummins testified at the hearing. Corbet repeated that he wanted Carpenter. He had already called the

man at home the day before and had asked him to come to work.

The next day Cummins sent two members of the Union from his out-of-work list—Yasurek and Pierotti. The work lasted 2 days. This means Carpenter was denied 2 days' work because of Cummins' position that he should not get the job despite the Employer's clear request. As to this incident there is no credibility issue involved at all. Cummins defended at the hearing with the argument that because Corbet did not after the wrong two men had been sent from the hall, call Cummins again to complain, his refusal to send Carpenter must be overlooked. It is not a good defense. Cummins' conduct that day was in violation of the statute by Local 836, and the Union must now pay Carpenter for the 2 days of work it caused him to lose.

Carpenter also spoke at length about his employment with another company, named Upon This Rock, whose manager is Ray Gorski. There is much confusion in his testimony about this company, when he worked, how long he was used now and then, etc. But, again, one thing is clear. On January 23, 1990, Gorski telephoned Cummins and asked that Carpenter be sent out to work for him. He asked for two men but was explicit that he wanted Carpenter. Cummins sent two men—Holjencin, as a steward, and an ordinary member Wildfire. His explanation at the hearing was that he telephoned Carpenter's house from his office after getting Gorski's request but that no one answered. And to make his story more credible, later, on January 24, 1990, he wrote a letter to Gorski saying "he had been unable to reach Carpenter," and on January 29, 1990, he wrote a similar letter to Carpenter, giving the same explanation as to why he did not refer him as requested by Upon this Rock. At the hearing Cummins said he wrote these two letters on the advice of his lawyer.

Would a business agent who gets no answer to his telephone call run to his lawyer for advice as to how to protect himself that same day? I do not credit Cummin's statement that he really tried to communicate with Carpenter but was unable to do so. He sent the man named Wildfire in Carpenter's place to further his resentment against the man because of his too independent spirit as a union member. Again, Cummins' refusal to refer Carpenter that day as requested by the employer, was a clear violation of Section 8(a)(1) of the Act chargeable to the Respondent. I do not know how much Carpenter would have earned had he gone to work for Upon this Rock on January 24, 1990. The records of that company will show how much Wildfire earned on that assignment, and that will be the amount the Respondent must now pay to Carpenter, with interest, to make him whole.

Another company about which there was much detailed testimony—most of it not really relevant to the true issue of this case—its name Kirila Construction Company. Ronald Kirila, its vice president, is the day-to-day operator of the Company. He uses many laborers out of Local 836, on and off.

Apart from the quarreling that went on on this workplace—Carpenter and those few union members who felt as he did, against the larger number who greatly resented his arrogance against the established officers of the Union—a critical fact must be stated at the start. Carpenter worked in this place—there is no way of knowing just how long—but

he never lost a day of work because of the activities of either of Cummins himself or the employees who hassled Carpenter on the job. From his testimony:

Q. Did Mr. Kilrila get rid of you?

A. No, he did not.

Q. Okay. So you didn't lose any work on this project?

A. No, no.

Because of the conflict among the employees, many of them walked off the job because they could not stand Carpenter's bossiness and his criticisms of the Union. This worried Cummins at times and he spoke to Kirila about Carpenter. All that is needed here is Kirila's testimony quoting Cummins. The rest of the many witnesses were all emotionally involved and therefore were not as reliable as the outsider—Kirila. From his testimony:

Q. Do you recall receiving a telephone call from Local 836 business agent Don Cummins?

A. Yes.

Q. To the best of your recollection please tell us what Mr. Cummins said to you and what you said to him?

A. Well, he wanted me to—he told me to get rid of Ralph and he would send some good men and I said—

Q. Did you respond to him?

A. Yes. I said Ralph is a good worker as far as I can see he is a good worker and I plan on keeping him. Well, he said you get rid of him and I will send you some good men, and I said no that I was going to keep him, if you want to send me some good men, go ahead, but I was going to keep Ralph.

Q. Do you recall him saying there were some problems?

A. Yes, he did, he told me he had a problem with Ralph and I said how come you didn't want Ralph, and he said we had a problem with him and I will send you some other good men.

This record is replete with evidence that at the bottom of Carpenter's difficulty with his fellow workers—all fellow members of the Union—lay his longstanding criticisms of how the officers were running the Local. Many of the men were related to those officers; virtually all of them had agreed with the \$75-a-man payment that the Local had imposed on them, and thought little of Carpenter's attempt to overrule it. It is probably true that on this Kirila job Carpenter tried to correlate work more efficiently, even drove some of the men to work harder, I can understand employees resenting this, but it has nothing to do with statutory rights under this Act. But, that the driving force behind the trouble on the job stemmed from internal union conflict between Carpenter's ideas as to how the Local should be run and that out of the majority, is a fact of life.

I can only conclude, considering the record and its entirety, that when Cummins kept pressing Kirila to discharge Carpenter he was violating Section 8(a)(1) of the Act and I so find.

The fifth complaint which issued on August 31, 1991, names E.E. Austin & Son, Inc., as the Employer involved. Again, the Respondent answer admits that that company also

is an employer engaged in commerce within the meaning of Section 2(5) of the Act.

Two incidents are said to prove unfair labor practices by the Local in this story. On about April 18, 1991, Terry Dennis, a superintendent of Austin, telephoned Cummins and asked that a laborer be sent to the jobsite. Dennis testified that when he asked for Carpenter Cummins answered that "he would send me a steward the next day." Cummins did that and sent Bob South as steward.

Cummins' failure to try to get in touch with Carpenter instead, and send him in place of South, is said to have been motivated by an intent to continue punishing Carpenter for his earlier disruption of the Union's functioning. There is no proof of that factual assertion in this instance. Besides, it is unquestioned that the business agent has a right to see that there is always a union steward on the job, and that when there is only one man on the job when it starts it must be a steward. It is also clear Cummins has the right to select who shall be the steward. This is all he did in this instance, I find nothing wrong with Cummins acting in sending Smith, as steward on this job, instead of Carpenter.

On May 28 or 29 (the record is not clear as to the date) Dennis again needed a man. He testified that he spoke to his foreman, Sam Pullian, about getting Carpenter on the job and asked him to call the Union's hall and ask for a man. Pullian did that. Dennis continued to testify as follows about Pullian's talk with Cummins on the phone. "He was—talking to Mr. Cummins about that we would need a laborer for Friday which was—this was Wednesday and he was going to request Mr. Carpenter, but Mr. Cummins said—wouldn't let him really talk and said that he would be sending out another steward."

The next day Cummins sent a laborer named Sean Morris to the job as a steward. Cummins' testimony that the Austin Company had been working that job for 3 days without a Local 836 steward is uncontradicted. Therefore, there was nothing wrong with Cummins sending a steward right away. Besides, since Pullian did not testify, there is really no evidence of anti-Carpenter malice in whatever Cummins did that day.

With the steward now on the job on May 31 the Company needed more men. Dennis told Morris to call the hall and handed him a list of names, on which Carpenter's was at the top. According to Dennis, the steward said, "he thought that that would be a difficult thing because Ralph and the Union had problems and that he didn't think that he would be sent out at that time." "Q. He didn't think Mr. Cummins would send him out? A. Yes, that is what I understood from talking to John [Morris]."

The next day Jim Morgan an ordinary member laborer arrived at the job.

Morris, who testified, recalled Dennis did tell him to get Carpenter if he could, and then added he called the hall, and Cummins' home also, and wasn't able to get in touch with anyone there. He then said that because Morgan had called him, and needed a job, he, Morris, told Morgan to come out to that jobsite.

There was still another request for a laborer on about July 1 on this project. Dennis again called Cummins on the phone and asked for Carpenter, as he recalls. Cummins said "he would do the best he could." Dennis' testimony concludes with the following:

Q. Did you also ask him to find out if—excuse me—did you also tell Mr. Cummins on that date—did you also provide him with a list of four individuals that you wanted that day from which one would be taken?

A. I specified Ralph Carpenter because it is the first one on the list. That is the one I wanted and then I says, “if he is not available,” I said, “here are some additional people that have worked for us that my office has sent me that I would like to have.”

Ray Bhe arrived on the job the next day. He was one of the men listed on Dennis’ suggested names.

Cummins admitted that he had sent Morris and Morgan to that jobsite. As to the July 1 request, his testimony is that Dennis listed four men as friends because “they had worked for him before,” and said that Cummins was free to select any man. Bhe was one of them.

No one on behalf of the Austin Company ever said anything to any union officer, or indeed to any steward, about the wrong man having been referred out of the hall. To start with, if Dennis really wanted Carpenter for any special assignment—he certainly must have known him well—all he had to do was call him himself and put him to work. All the employees involved in this case are free to seek and accept jobs entirely independently of the hiring hall.

As to Cummins’ selection of which out-of-work members to send out he offered the most plausible explanation possible. He regularly chooses those men who have the least, or no workmen’s compensation due them. If the man still has many weeks of unemployment insurance due him, they must wait until the men in need go to work first. It is undisputed that the men Cummins did send out had much greater need than Carpenter in this respect. Carpenter admitted that when this happened, he still had “a couple of months” of workmen’s compensation due him.

The record does not support this last allegation of illegal conduct by Local 836, and I shall therefore make no findings against it.¹

¹To confuse matters even more Carpenter, in his often confused testimony, said that during this very period he was working full time

IV. THE REMEDY

The Respondent must be ordered to cease and desist from again committing the unfair labor practices. It must also be ordered to make whole Ralph Carpenter for any loss of pay he has suffered because of the Respondent’s coercive action against him.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activity of the Respondent set forth in section III, above, occurring in connection with the operations of the various interstate companies detailed above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and they tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. By filing internal union charges against Ralph Carpenter and then fining him \$1500 and \$5000 for having exercised his protected statutory right, by refusing to refer Carpenter for employment at the specific request of the Corbet Company and thereby causing him to lose 2 days’ pay, by refusing to refer Carpenter to work at the specific request of a company called Upon This Rock, and by urging the Kirila Construction Company to discharge Carpenter, the Respondent has violated and is violating Section 8(b)(1)(A) of the Act.

2. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

5 days a week for another company, and working 2 days a week—Saturdays and Sundays, on the Austin project at overtime pay.